

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PARAMJIT SINGH BASRA,

Petitioner,

v.

DAVID KEENAN, The Honorable Judge,
and DONALD RAZ, prosecuting attorney

Defendants.

Case No. C23-1561-RSM

ORDER DENYING CERTIFICATE OF
APPEALABILITY

This matter comes before the Court on referral from the Ninth Circuit Court of Appeals for the limited purpose of granting or denying a certificate of appealability. Dkt. #19.

On October 11, 2023, Petitioner filed an Application for Leave to Proceed *In Forma Pauperis* with a proposed Petition for Writ of Mandamus, which the Clerk's Office styled as a Petition for Writ of Habeas Corpus. Dkt. #1. Petitioner requested the Court issue a writ of mandamus directing the King County Superior Court to issue an order for Petitioner's immediate release from custody and monetary damages for "unlawful imprisonment starting on the date of arrest." Dkt. #7 at 2. On October 24 and December 22, 2023, the Court ordered Petitioner to amend his Petition to comply with the Rules Governing Section 2254 cases. Dkts. #8, #10. To both Orders, Petitioner responded that the Court erred in recharacterizing his Petition for Writ of

1 Mandamus as a 28 U.S.C. § 2254 habeas petition and requested his filing be considered as a
2 Petition for Writ of Mandamus. Dkts. #9, #11.

3 On February 1, 2024, considering Petitioner's filing as a Petition for Writ of Mandamus
4 as requested, United States Magistrate Judge Grady J. Leupold recommended the Petition be
5 dismissed with prejudice for lack of jurisdiction and frivolousness as a matter of law, which this
6 Court then adopted in its Order. Dkts. #12, #13. On April 24, 2024, the Ninth Circuit remanded
7 this case to the Court for the limited purpose of granting or denying a certificate of appealability
8 because "Appellant filed a petition for writ of mandamus and the district court treated it as a
9 disguised petition for writ of habeas corpus under 28 U.S.C. § 2254[.]" thus the "requirements
10 of 28 U.S.C. § 2253(c) therefore appear to apply to this case." Dkt. #19.

11 Rule 11(a) of the Rules Governing Section 2254 Cases provides that "[t]he district court
12 must issue or deny a certificate of appealability when it enters a final order adverse to the
13 applicant." § 2253(c) states that an appeal cannot be taken to the court of appeals from "the final
14 order in a habeas corpus proceeding in which the detention complained of arises out of process
15 issued by a State court" unless a judge issues a certificate of appealability. 28 U.S.C. § 2253(c).
16 To obtain one, a petitioner must make "a substantial showing of the denial of a constitutional
17 right." 28 U.S.C. § 2253(c)(2). The petitioner "need not show that he should prevail on the
18 merits" but only that the issue presents a "question of some substance," that is, an issue that (1)
19 is "debatable among jurists of reason," (2) could be "resolved in a different manner" by courts,
20 (3) is "adequate to deserve encouragement to proceed further," or (4) is not "squarely foreclosed
21 by statute, rule or authoritative court decision" or "lacking any factual basis in the record."
22 *Barefoot v. Estelle*, 463 U.S. 880, 893–94 & n.4 (1984); *Slack*, 529 U.S. at 483-84.

23 It is unclear to the Court that it has issued "a final order adverse to the applicant" under
24 Rule 11(a) of the Rules Governing Sections 2254 Cases by denying a Petition for Writ of

1 Mandamus for being frivolous as a matter of law and for no jurisdiction. In his Report and
2 Recommendation, Magistrate Judge Leupold considered Petitioner's filing as a Petition for Writ
3 of Mandamus, as the Petitioner demanded multiple times, and did not consider it as a disguised
4 habeas petition. While Petitioner's instant Petition cannot be amended to cure its deficiencies,
5 Petitioner may still file a different petition, such as a § 2254 habeas petition.

6 Accordingly, the Court finds and ORDERS that a certificate of appealability should not
7 issue in this case and STRIKES Petitioner's "Motion for Clarification of the Issues," Dkt. #20,
8 as moot. The Court directs the Clerk to send a copy of this Order to the Ninth Circuit Court of
9 Appeals.

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11 DATED this 21st day of June, 2024.

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14 RICARDO S. MARTINEZ
15 UNITED STATES DISTRICT JUDGE
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